



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,785	02/16/2006	Jean-Paul Denisart	112701-704	6380
29157	7590	06/18/2009	EXAMINER	
K&L Gates LLP			ALEXANDER, REGINALD	
P.O. Box 1135				
CHICAGO, IL 60690				
			ART UNIT	PAPER NUMBER
			3742	
			NOTIFICATION DATE	DELIVERY MODE
			06/18/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com



## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 50-55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no positive recitation in the claims of any steps which would result in the production of a beverage. The actual injection of a liquid is not positively recited, but merely inferentially claimed. There is no positive recitation of a recognition step, or infusion step or final beverage making step.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 22 and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Green or Lassota '676.

There is disclosed in Green and Lassota a device for preparing a beverage by injecting, under pressure, hot water through a capsule containing a substance,

Art Unit: 3742

comprising a water injection system (Green: controllable valve 190; dispenser nozzle 200; flow sensor 250; pump 130; controller 270), (Lassota: controllable valve 34; dispenser head 38; controller 36, 42), the water injection systems can be switched allowing for a selection to be made between two different modes of wetting the substance so as to adapt wetting in accordance with the nature of the substance contained in the capsule, the two modes having between them a distinctive feature which includes the depth position of injection into the capsule.

A varied flow rate would allow for a varied initial penetration depth of water into the material within the capsule.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 31-33 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Baselt.

There is disclosed in Baselt a device for preparing a beverage by injecting water through a capsule containing a substance, comprising a water injection system 26, 34, 36, 42, the water injection system can be switched allowing for a selection to be made between at least two different modes of wetting the substance, wherein the water injection system comprises a perforation and injection element 26 that can be displaced in the capsule into at least two distinct positions with reference to a perforated surface of the capsule.

It is apparent that the injection element 26, due to the rack and pinion arrangement 34, 36 can be positioned at several locations within the capsule. The

Art Unit: 3742

reason for the different injection depths is not structurally limiting. The device of Baselt is capable of the recited function.

***Allowable Subject Matter***

Claims 34-39 and 41-49 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 3742

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Reginald L. Alexander/  
Primary Examiner  
Art Unit 3742